

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

November 12, 2009

Charles R. Fulbruge III  
Clerk

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No. 09-10081  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAVIER MORALES-MORENO,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:08-CR-228-ALL

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Before JONES, Chief Judge, and DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Javier Morales-Moreno pleaded guilty to one count of illegal reentry into the United States. The district court sentenced him to 41 months in prison and a two-year term of supervised release. On appeal, Morales-Moreno argues that the district court erred by determining that his prior conviction for aggravated sexual assault of a child, under TEX. PENAL CODE ANN. § 22.011(a)(2)(A), was a crime of violence and by sentencing him pursuant to this determination. He contends that this offense does not satisfy the definition of a crime of violence

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

because it does not have as an element the use, attempted use, or threatened use of force. He also argues that his offense of conviction does not qualify as an enumerated offense of either sexual abuse of a minor or statutory rape because Texas sets the age of consent at 17, higher than the majority of states and the Model Penal Code. Morales-Moreno concedes that review is for plain error.

In a case decided after Morales-Moreno filed his brief, this court has rejected all of his arguments. *See United States v. Castro-Guevarra*, 575 F.3d 550, 552-53 (5th Cir. 2009). On de novo review, the court held that a conviction under TEX. PENAL CODE ANN. § 22.011(a)(2)(A) was a crime of violence and would support a 16-level increase in a defendant's offense level. *Castro-Guevarra*, 575 F.3d at 552-53.

AFFIRMED.